

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**Docket Number (Optional)
01752810

First named inventor: SMOLYAROV, Boris V.

Application No.: 09/717,559

Art Unit: 3763

Filed: November 21, 2000

Examiner: MENDEZ, Manuel

Title: Safety Mechanism To Prevent Accidental Patient Injection and Methods of Same

Attention: Office of Petitions

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee☒ Small entity-fee \$ 810.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of a Request For Continued Examination (37 CFR 1.114) _____ (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

(Page 1 of 2)

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.111 and 1.114. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

/Jamison E. Lynch/

Signature

February __, 2009

Date

Jamison E. Lynch

Typed or printed name

41,168

Registration Number, if applicable

Mayer Brown LLP

Address

312-701-7551

Telephone Number

P.O. Box 2828, Chicago, IL 60690

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date

Signature

Typed or printed name of person signing certificate

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT:	Boris V. SMOLYAROV, et al.)	ATTORNEY DOCKET:	01752810
SERIAL NO.:	09/717,559)	GROUP ART UNIT:	3763
)		
FILED:	November 21, 2000)	EXAMINER:	MENDEZ, Manuel A.
)		
TITLE:	SAFETY MECHANISM TO PREVENT ACCIDENTAL PATIENT INJECTION AND METHODS OF SAME			
)		
DATE:	February 19, 2009)		

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**ADDITIONAL SHEETS CONTAINING STATEMENTS ESTABLISHING
UNINTENTIONAL DELAY IN CONNECTION WITH PETITION FOR REVIVAL OF
AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY
UNDER 37 CFR 1.137(b)**

Dear Sir,

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

In connection with the Applicants petition for revival of the above referenced application, the Applicants have attached this detailed explanation of the factual events which led to the unintentional abandonment of the above-identified application, as well as the subsequent unintentional delay in filing the required reply which occurred thereafter. The details are as follows:

On December 15, 2004, the USPTO mailed a first substantive Office Action on the merits to Mayer, Brown, Rowe & Maw LLP ("Mayer Brown"), to which a response was subsequently filed on June 15, 2005.

On March 3, 2006, Joseph A. Mahoney, an attorney of record at Mayer Brown in the above-identified application, filed a Request For Withdrawal As Attorney (37 CFR 10.40(c)) ("the Request") on behalf of all attorneys/agents of record. The Request was received by the United States Patent and Trademark Office ("the USPTO") on March 7, 2006. The Request indicated that the last known mailing address of the inventors or assignees of the entire interest in the application was:

James Smith
President and CEO
Felton International, Inc.
8210 Marshall Drive
Lenexa, KS 66214

On May 9, 2007, the USPTO mailed a Decision On Petition To Withdraw From Record to Mayer Brown, indicating that the previously filed Request had been approved and that all attorneys/agents of record in the application had been withdrawn.

On July 18, 2007, the USPTO mailed a Final Office Action. However, rather than mailing the Final Office Action to the last known mailing address that had been previously provided in the Request, the Office Action was mailed to the first named inventor at the following address:

Boris Smolyarov
U. Yanonisa Street House 17
Apt. 185
Voronezh, 394051
RUSSIAN FEDERATION

Accordingly, when the Request was approved by the USPTO, the correspondence address information for the above-identified application was not updated by the USPTO in their patent file management computer systems to reflect the most recent correspondence address provided in the Request. Therefore, the assignee of the entire interest in the application did not receive the Final Office Action from the USPTO.

On October 29, 2007, Mayer Brown electronically filed a new, properly executed Power of Attorney ("the POA") with the USPTO, which named the Mayer Brown practitioners associated with customer number 26565 as the attorneys/agents of record for the above-identified application. The USPTO received the POA, as evidenced by the electronic filing receipt having EFS ID No. 2388463. However, the POA was not properly or fully entered into the USPTO's various patent file management computer systems. When the USPTO received the POA, it was scanned into the USPTO's electronic file wrapper system, Electronic Desktop Application Network ("EDAN"). However, the new correspondence address from the newly filed POA was never entered into the USPTO's Patent Application Location and Monitoring ("PALM") system, which

contains all of the correspondence information, for each pending patent application or granted patent, that is used by the USPTO to send out any correspondence related to a patent or patent application. The correspondence information contained in the PALM system can only be updated by a manual data entry process, in which an individual at the USPTO must manually type in the updated correspondence information located in the newly received POA. This manual data entry process of updating the correspondence address was never performed when the USPTO received the new POA filed by Mayer Brown for the above-identified application. Accordingly, the USPTO did not have the correct correspondence address in their PALM system.

On February 7, 2008, a Notice of Abandonment was mailed out by the USPTO. However, because the PALM system was never updated to reflect the correspondence information associated with customer number 26565, as was provided in the POA for the above-identified application, the Notice of Abandonment was not mailed to the attorneys of record at Mayer Brown. Rather, the Notice of Abandonment was incorrectly mailed to Mr. Smolyarov at the same address used by the USPTO for mailing the Final Office Action.

On January 9, 2009, unaware of either the mailing of the Final Office Action or the abandoned status of the application, William Cassin, an attorney at Mayer Brown, contacted Examiner Nick Luchesi, the Examiner Supervisor for Art Unit 3763, to ascertain the status of the application and inquire as to why no Office Actions had been received by either the assignee of the application or the attorneys of record since the first Office Action had been received on Dec. 15, 2004. It was during this phone call that the above events related to the correspondence address not being properly updated by the USPTO was discovered by Mr. Luchesi and explained to Mr. Cassin.

On January 15, 2009, Examiner Luchesi faxed a copy of the Final Office Action to Mr. Cassin so that a response to the Final Office Action may be drafted by Mayer Brown.

On January 22, 2009, Examiner Luchesi faxed a copy of the Notice of Abandonment to Mr. Cassin as well as a copy of the Notice of References Cited in the Final Office Action.

The Commissioner is hereby authorized to charge any additional fees (or credit any overpayment) associated with this communication to our Deposit Account No. 13-0019. Thank you in advance for your cooperation.

Respectfully submitted,

/ Jamison E. Lynch /

Jamison E. Lynch

Reg. No. 41,168

CUSTOMER NUMBER 26565

MAYER BROWN LLP

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Chicago, IL 60690-2828

Telephone: (312) 701-7551

Facsimile: (312) 706-9000

February 19, 2009